IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 7519 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEEPAKKUMAR CHAMANLAL JAIN & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BHARAT T RAO for Applicant(s) : 1 - 2.
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR PJ KANABAR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 10/04/2007

ORAL JUDGMENT

1. Heard learned Advocate Mr. B.T.Rao for the petitioner , learned A.P.P. Mr. U.R.Bhatt for the respondent no.1 and Mr.

Kanabar for the respondent no.2.

2. Rule. Learned A.P.P. Mr. U.R.Bhatt waives service of rule on behalf of the respondent no.1 while learned Advocate Mr. P.J.Kanabar waives service for the respondent no.2.

3. The applicants have preferred the present application praying for quashing and setting aside Criminal Case no.911 of 2000 pending in the Court of First Judicial Magistrte (First Court) at Surat filed by the respondent no2-complainant for the offences under Sections 406, 420, 423 and 468 read with Section 114 of the Indian Penal Code.

4. It is the case of the applicants that they are having their shop situated at Chandni Chowk, Old Delhi-6 and carrying on business of Synthetic Fabric Sarees. For their business the applicants purchased various types of synthetuic sarees from various parts of the country.

5. The respondent no.2 -original complainant is the proprietor of the proprietory concern doing the business of Cloth Merchant and Commission Agent dealing in Arts Silk Cloth under the name and style of Inderlal and Sons, at 307, 3rd Floor, Maharaja Chambers, Salabatpura, Surat. Under the recommendations of one of the relatives of the complainant, the applicants had approached the complainant for purchase of Arts Silk Cloth and on assurance given by them of making payment in time, the complainant' agreed to supply Arts Silk Cloth by purchasing the same from the market for the applicants shop. As agreed the complainant despatched the

consignments of goods to the applicant-accused by parcel through Laxmi Freight Carriers Pvt.Ltd., vide bill nos.141 to 158 on various dates. The total cost of the goods was Rs.1,40,211/-, however, some part payment had been made by the applicants-accused and for the remaining amount the complainant had made repeated demands but the applicants-accused had failed to make the payment.It is alleged by the complainant that in good faith relying on the assurance and promises given by the applicants-accused, the complainant had supplied the goods but the applicants accused committed breach of trust by not making payment of the remaining about, for which Criminal Case has been filed by the complainant for the offences under Sections 406, 420, 423 and 468 read with Section 114 of the Indian Penal Code.

6. Mr. B.T.Rao, learned Counsel for the applicants-accused argued that the transaction in question is a commercial transaction and no ingredients in respect of any of the offences as mentioned above is attracted, and therefore, the complaint is required to be quashed.

7. As against that, it is the submission of learned Advocate Mr. Kanabar for the respondent no.2 that prima facie offence of breach of trust and cheating is made out by the complainant , and hence, there being disputed questions of fact which can be decided only after recording of evidence at the trial, the application deserves to be dismissed.

8. A plain reading of the complaint makes it clear that the

transactions in question took place during the year 1998 and the complaint having been lodged on 21st July, 2001 there is a long lapse of three years.. Moreover, it is an admitted postion and it also clearly reveals from the complaint that the transaction in question i.e. placement of orders by the applicants-accused and the supply of the goods by the complainant had taken place in the course of business dealings. This indicates that there exists only civil liability for which it is open for the complainant to file civil suit, and hence, as no offence is made out for the offence under Sections 406, 420,423, 468 read with Section 114, IPC, the application is required to be allowed.

9. Accordingly, the application is allowed. Criminal Case no.911/2000 pending in the Court of First Judicial Magistrate (First Court) at Surat filed by the complainant against the petitioners is hereby quashed and set aside. Rule is made absolute.

(M.D.Shah,J.)

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